

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>VERIZON NORTH INC., VERIZON SOUTH INC.</b>	)	
<b>ILLICOM TELECOMMUNICATIONS, INC. (ILLICOM)</b>	)	<b>02-0107</b>
	)	
<b>Joint Petition of VERIZON North Inc. VERIZON South Inc.</b>	)	
<b>ILLICOM TELECOMMUNICATIONS, INC. (ILLICOM)</b>	)	
<b>for Adoption Pursuant to 47 U.S.C. §252(i) Regarding Adoption of an</b>	)	
<b>Interconnection Agreement.</b>	)	

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**VERIFIED STATEMENT OF A. OLUSANJO OMONIYI**

My name is A. Olusanjo Omoniyi and I am employed by the Illinois Commerce Commission as a Policy Analyst in the Telecommunications Division. I graduated from Southern Illinois University at Carbondale with a Bachelor of Arts degree in Cinema & Photography and Bachelor of Science degree in Radio-Television in 1987. In 1990, I obtained a Master of Arts degree in Telecommunications and a Juris Doctor in 1994 also from Southern Illinois University at Carbondale. Among my duties as a Policy Analyst is to review negotiated agreements and provide a recommendation as to their approval.

**SYNOPSIS OF THE AGREEMENT**

The instant agreement between VERIZON NORTH INC., VERIZON SOUTH INC. (collectively "VERIZON" or "Carrier") and ILLICOM TELECOMMUNICATIONS, INC. ("ILLICOM" or "Requesting Carrier"), becomes effective as of October 25, 2001 and is scheduled to terminate on June 28, 2002. In this agreement, the parties adopted the terms of an interconnection agreement between VERIZON f/k/a GTE and A T & T Communications of Illinois, Inc. in Docket No. 99-AA-001, including but not limited to the

term of agreement. Also, the agreement establishes the financial and operational terms for: the physical interconnection between VERIZON f/k/a GTE and ILLICOM networks on mutual and reciprocal compensation; unbundled access to VERIZON's network elements, including VERIZON's operations support systems functions; physical collocation of certain equipment; number portability; resale and a variety of other business relationships. The rates for VERIZON's services available for resale are based upon an avoided cost discount from VERIZON's retail rates.

The purpose of my verified statement is to examine the agreement based on the standards enunciated in section 252(e)(2)(A) of the 1996 Act. Specifically, this section states:

The State commission may only reject-  
an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that-

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

## **I. APPROVAL UNDER SECTION 252(e)**

### **A. DISCRIMINATION**

The first issue that must be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it discriminates against a telecommunications carrier that is not a party to the agreement.

Discrimination is generally defined as giving preferential treatment to the requesting carrier to the detriment of a telecommunications carrier that is not a party to the agreement. In previous dockets, Staff has taken the position that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all

similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the agreement. I recommend that the Commission use the same approach when evaluating this negotiated agreement.

A carrier should be deemed to be a similarly situated carrier to ILLICOM for purposes of this agreement if telecommunications traffic is exchanged between such carrier and VERIZON for termination on each other's networks and if such carrier imposes costs on VERIZON that are no higher than the costs imposed by ILLICOM . If a similarly situated carrier is allowed to purchase the service(s) under the same terms and conditions as provided in this contract, then this contract should not be considered discriminatory. Evaluating the term discrimination in this manner is consistent with the economic theory of discrimination. Economic theory defines discrimination as the practice of charging different prices (or the same prices) for various units of a single product when the price differences (or same prices) are not justified by cost. See, Dolan, Edwin G. and David E. Lindsey, Microeconomics, 6<sup>th</sup> Edition, The Dryden Press, Orlando, FL (1991) at pg. 586. Since Section 252(i) of the 1996 Act allows similarly situated carriers to enter into essentially the same contract, this agreement should not be deemed discriminatory.

## **B. PUBLIC INTEREST**

The second issue that needs to be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it is contrary to the public interest, convenience, and necessity. I recommend that the Commission examine the agreement on the basis of economic efficiency, equity, past Commission

orders, and state and federal law to determine if the agreement is consistent with the public interest.

In previous dockets, Staff took the position that negotiated agreements should be considered economically efficient if the services are priced at or above their Long Run Service Incremental Costs ("LRSICs"). Requiring that a service be priced at or above its LRSIC ensures that the service is not being subsidized and complies with the Commission's pricing policy. All of the services in this agreement are priced at or above their respective LRSICs. Therefore, this agreement should not be considered economically inefficient.

Also, upon Staff's review, it was noted that VERIZON wrote a letter to ILLICOM on October 11, 2001 upon the latter's request to adopt the terms of the interconnection agreement between VERIZON f/k/a GTE and A T & T Communications of Illinois in Docket No. 99-AA-001 pursuant to §252(i) of the Federal Telecommunications Act of 1996 (FTA '96). VERIZON f/k/a GTE attempted to use the letter for modification of the referred agreement on the basis of pending litigations in the U.S. Court of Appeals for the Eight Circuit and the U.S. Supreme Court ruling in *Iowa Utilities Board*.<sup>1</sup>

Succinctly, the *Iowa Utilities* Court vacated Rule 51.319 of the Federal Communications Commission (FCC)'s First Report and Order 96-325, 61 Fed. Reg. 45476 (1996) regarding unbundling obligations of the incumbent local exchange carriers (ILECs) pursuant to §251(c)(3) and 251(d)(2) of the FTA '96. The Supreme Court held that the FCC "did not" interpret "the terms of the statute in a reasonable fashion" and that the agency had construed too permissively the congressional requirement that elements should only be subject to unbundled access if "necessary" and if lack of

access to them would “impair” a competing carrier from providing services.<sup>2</sup> The Supreme Court directed the FCC “to revise the standards under which the unbundling obligations” of the ILECs are determined pursuant to §251(c)(3). Furthermore, the agency was required to devise a better interpretation of the “necessary” and “impair” standards in §251(d)(2), and to “apply some limiting standard,” which are “rationally related to the goals” of the FTA '96.<sup>3</sup>

In accordance with the Supreme Court ruling, the FCC has promulgated a new unbundling network elements rule, which took into account those directives. The new FCC regulations now require that where an ILEC “provides requesting carriers with access to unbundled switching,” the ILECs must also provide access to unbundled shared transport services.”<sup>4</sup> In the instant agreement, VERIZON f/k/a GTE does not seem to have taken into account the November 5, 1999 Order from the FCC as demonstrated by its letter to ILLICOM . In addition, the FCC in its Internet Order of April 18, 2000, has ruled upon the issue of reciprocal compensation in paragraph 6 and Verizon’s summary is appropriate.

Moreover, litigation on the issues that were referred to in both paragraph 4 of VERIZON’s letter has actually moved from the Eight Circuit to the U.S. Supreme Court as a result of appeals by the FCC and a host of other appellants.<sup>5</sup> Thus, there is no discernible ruling other than the fact that everything remains the same prior to appeal to the Eight Circuit.

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<sup>1</sup> *A T & T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

<sup>2</sup> *Id.* at 736.

<sup>3</sup> See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, Docket No. 96-98, FCC 99-238, para. 1 (rel. Nov. 5, 1999); *A T&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 734-36 (1999).

<sup>4</sup> *Id.* at para. 369.

<sup>5</sup> See, *VERIZON Communications v. FCC, et al.*, 2001 U.S. Lexis 947 (2001).

Furthermore, based on the fact that several of the issues raised in this letter remain unresolved either by the FCC or courts of competent jurisdiction, the Staff recommends that this letter should be disregarded by the Commission and not be treated as part of the underlying agreement by both parties. Therefore, the Staff recommends that the Commission take a stand-still approach until these issues are resolved and continues to apply its prevailing procedures.

Staff notes that, in every previous docket, VERIZON or its predecessor agreed that this letter is not part of the underlying negotiated agreement. The Commission Order approving the negotiated agreement has also referenced this fact as well.<sup>6</sup> Staff has referred to this letter as part of the pre-agreement negotiations, although VERIZON and its predecessors do not agree with the categorization.

However, because of the way the Commission's website operates, VERIZON's or its predecessor's letter has found its way onto the website as "part" of the interconnection agreement. Because of this, an additional filing from VERIZON will be necessary to avoid the inclusion of the VERIZON "letter of position" as part of the interconnection agreement when the letter is not part of the agreement. What needs to be done will be spelled out below in the "Implementation" Section.

Finally, I recommend that the Commission approve this agreement subject to the above recommendations.

## **II IMPLEMENTATION**

In order to implement the VERIZON-ILLICOM agreement, the Commission should require VERIZON to, within five days from the date the agreement is approved,

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<sup>6</sup> See Ill. C.C. Docket 00-0571

modify its tariffs to reference the negotiated agreement for each service. Such a requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the agreement. The following sections of VERIZON tariffs should reference the VERIZON-ILLICOM Agreement: Agreements with Telecommunications Carriers (ICC No. 10 Section 18).

Furthermore, in order to assure that the implementation of the Agreement is in public interest, VERIZON should implement the Agreement by filing a copy of the Agreement between VERIZON and ILLICOM without VERIZON's letter of position that was referred to earlier in this verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission. VERIZON should verify that the Agreement being filed without its letter of position is the same as the Agreement filed in this docket with the verified petition. The Chief Clerk should place the separately filed Agreement without the letter on the Commission's web site under Interconnection Agreements. Such a requirement is also consistent with the Commission's Orders in previous negotiated agreement dockets.

For the reasons enumerated above, I recommend that the Commission approve this agreement pursuant to Section 252(e) of the Telecommunications Act of 1996.